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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE NO. 320 OF 1983

The Commissioner of Income-Tax
Gujarat-II, Ahmedabad .. Applicant

Versus

Shri Kiritkumar S. Mehta & 4 ors. .. Respondents

Date of Decision : 25th November 1996

For Approval and Signature

THE HONOURABLE MR. JUSTICE R.K. ABICHANDANI

THE HONOURABLE MR. JUSTICE RAJESH BALIA

Appearance:

Mr. Mihir H. Thakore, for the Applicant
Mr. K.C.Patel for the respondents

1. Whether Reporters of Local Papers may be allowed to see the judgement?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of Judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

Coram : R.K. Abichandani and Rajesh Balia, JJ
25th November 1996

Oral Judgement (Per R.K. Abichandani, J)

1. The following two questions have been referred to us by the Tribunal under Section 256(1) of the Income Tax Act:

- 1) "Whether on the facts and in the circumstances of the case, the Income-tax Appellate Tribunal has been right in law in holding that the proceedings initiated by the Income-tax Officer were not valid since the notice under Section 148 dated 1-4-1978 was served after the period of limitation?"
- 2) "Whether, on the facts and in the circumstances of the case, the Appellate Tribunal has been justified in law in holding that the proceedings of re-assessment under Section 147(b) started in pursuance of notice under Section 148 were bad in law?"

2. The assessment was completed under Section 143(1) of the Act on 20.1.1974 determining the total income of the assessee at Rs.19000/- on the basis of the return filed by the assessee on 10.8.1978. Acting on information which was received by the Income-tax Officer that the market value of the property known as Morvi House of which the assessee was a co-owner was of Rs.12.00 to 15.00 lakhs as against the value of Rs.4,75,000/- disclosed by the assessee at the time of registration of the property. The Income-tax Officer reopened the assessment under Section 147(b) of the Act. Notice was issued under Section 147(b) by the Income-tax Officer on 31.3.1978 which was served on the assessee on 1.4.1978. The assessment was completed by the Income Tax Officer after making an addition of Rs.1,08,750/- to the originally assessed income. The said addition related to the assessee's share as unrecorded investment in the said property. The assessee thereupon preferred an appeal before the Commissioner (Appeals) contending that no reassessment could have been made since the notice was served on the assessee on 1.4.1978 beyond the time limit prescribed under Section 153 of the Act which had expired on 31.3.1978. It was contended that on the authority of the decision of this Court in Shanabhai B. Patel Vs. R.K. Upadhyay 96 ITR 141, that the

reassessment done by the Income Tax Officer was without jurisdiction. The Tribunal in light of the said decision in Shanabhai's case held that the Income Tax Officer had no jurisdiction to reassess since the notice was not served within the time limit set by the provisions of Section 153 of the Act. The Tribunal also relied upon the decision of the Supreme Court in Kundanlal's case reported in 99 ITR 581 which was in context of the provisions of Section 18(2A) of the Wealth Tax Act.

3. The decision of this Court in Shanabhai's case (supra) on which reliance was placed by the Tribunal has been reversed by the Supreme Court in R.K.Upadhyay v. Shanabhai B. Patel reported in 166 ITR 163, in which the Supreme Court highlighting the distinction between the provisions of Section 34 of the Act of 1922 and Sections 147, 148 and 149 of the Act of 1961 has held that once a notice is issued within the period of limitation, jurisdiction becomes vested in the Income Tax Officer to proceed to reassess. The mandate of Section 148(1) is that reassessment shall not be made until there has been service. The requirement of issue of notice is satisfied where a notice is actually issued. In this case, admittedly, the notice was issued within the prescribed period of limitation on 31.3.1978 which was the last day of that period. Service of the notice under the Act of 1961 for the purpose of reassessment was not a condition precedent to conferment of jurisdiction on the Income Tax Officer to deal with the matter, but, it is a condition precedent to the making of the order of assessment. The Supreme Court therefore held that reliance on the earlier decision of the Supreme Court in Banarasi Devi vs. The Income Tax Officer reported in 53 ITR 100 which was rendered in context of Section 34 of the Income Tax Act of 1922 would not be justified in context of the provisions of Section 148(1) of the Act of 1961.

4. The Tribunal while relying upon the decision of this Court in Shanabhai's case (supra) has also referred to the decision of the Supreme Court in Kundanlal's case in 99 ITR 581 in which it was held that the word, 'issued' occurring in Section 18(2A) of the Wealth Tax Act had a wider meaning and it was not used in the narrow sense of 'sent' and that it included service of notice which has been issued. It will be seen that this decision was rendered in context of the provisions of Section 18(2A) of the Wealth Tax Act which empowered the Commissioner in his discretion to reduce or waive penalty imposable on a person if he was satisfied that such person had prior to the issue of notice to him under subsection (2) of Section 14 of the Wealth Tax Act, voluntarily and in good faith

made full disclosure of his net wealth. In the said context unless the notice was served to the concerned person, he would not know that it was issued and therefore his disclosure prior to the notice being served on him would be treated as made voluntarily and in good faith. The decision in Kundanlal's case (supra) cannot therefore be relied on for construing the word 'issue' in Section 148(1) of the Act of 1961, more particularly, when there is a direct decision of the Supreme Court in Upadhyay's case (supra) clearly holding that once a notice is issued within the period of limitation, jurisdiction becomes vested in the Income Tax Officer to proceed to reassess. Since the notice was issued under Section 147(b) of the Act by the Income Tax Officer on the last date of the period of limitation, he had jurisdiction to proceed to reassess and therefore the view of the Tribunal holding that the proceedings initiated by the Income Tax Officer were not valid cannot be accepted.

5. We, therefore, answer the question referred to us in the negative and in favour of the revenue. The reference stands disposed of accordingly, with no order as to costs.
